

IN THE  
United States  
Circuit Court of Appeals  
For the Ninth Circuit

THOMAS JOEL WRIGHT,  
Appellant,

vs.

UNITED STATES OF  
AMERICA,

Appellee.

FILED

MAR 15 1948

PAUL P. O'BRIEN, CLERK

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BRIEF FOR APPELLEE

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STATEMENT OF CASE

The indictment charged the appellant with transporting and causing to be transported in interstate commerce, a falsely made, forged and counterfeited security, to-wit, a bank check. The facts in the case are not in dispute. The check was drawn and cashed in Phoenix, Arizona, on the Walker Bank and Trust Company, Salt Lake City, Utah. The check, in the usual course of business, was transported in interstate commerce from Phoenix to Salt Lake City, Utah. The appellant had no funds or credit at the Walker Bank

and Trust Company, and payment on the check was refused. There is also no dispute of the fact that the check bore the true signature of the appellant.

## QUESTIONS PRESENTED

Appellant contends that the check, being drawn in the true name of the appellant as maker, was neither falsely made, forged, altered nor counterfeited, and therefore not within the scope of the statute.

The three assignments of error are all based upon the contention of the appellant just stated.

## ARGUMENT

We submit that in order to sustain the government's position in this case, it is immaterial whether we consider the check in question *falsely made* or *forged*. Therefore, we do not consider it necessary to indulge in a long technical argument on the legal difference between a falsely made security and a forged security. We believe that the security in question was both falsely made and forged.

*Williams v. Territory*, 13 Ariz. 27  
(108 Pac. 243)

*Buckner v. Hudspeth*, 105 F. (2d) 393  
(10th C.C.A.)

*Hart v. Squier*, 159 F. (2d) 639  
(9th C.C.A.)

In the *Williams* case (*supra*) the question was squarely before the Arizona Supreme Court. It was contended by the appellant in that case that a check bearing the genuine signature of the maker was a genuine check and was neither false nor bogus. In an opin-



ion in which the authorities on the interpretation of the words "false" and "bogus" were thoroughly explored, the Arizona Supreme Court held that the check was both false and bogus. We quote from that opinion (page 33):

"It is sufficient for the purpose of this case to hold that a check is 'false' within the statute when it is a wilfully untrue written order directing a bank to pay money on demand."

In the case of *Buckner vs. Hudspeth* (supra) the Court, in discussing a check signed with a fictitious name, said:

"It may be wholly fictitious if the instrument is made with intent to defraud and shows on its face that it has sufficient efficacy to enable it to be used in the injury of another." (Citing *Meldrun vs. U. S.*, 9th C.C.A., 151 Fed. 177).

In the 9th Circuit case of *Hart vs. Squier* (supra), the defendant gave a fictitious name to a physician and was issued a narcotic prescription. He was charged with uttering and publishing a false and forged writing for the purpose of defrauding the government. We quote the following from the opinion, page 640:

"The narrow inquiry, therefore, is: Is the prescription 'false' or 'forged' within the meaning of the statute? To state the question is to answer it, for under the allegation of the indictment, the name on the prescription is not appellant's true name, but is assumed, fictitious—false. We need not decide whether this is forgery or not."

Blackstone defined forgery to be "the fraudulent making or alteration of a writing to the prejudice of another's right." *State vs. Wheeler*, 25 Pac. 394. We take the following quotation from the opinion of Judge Bean in the last cited case:

“The making or alteration of any writing with a fraudulent intent whereby another may be prejudiced, is forgery.”

“The question of intent is material in determining the guilt of the party charged, and the falsity of the instrument. It is the false making with an intent to defraud at which our statute is aimed.”

“A person may falsely make a note if the note be true in point of fact.”

It was the intention of Congress in passing the law which appellant is charged with violating, to protect the general public from being defrauded by the use of false and fictitious securities. If we keep this purpose in mind, we have no difficulty in arriving at the conclusion that the activities of appellant were in violation of that law.

The appellant's argument and the authorities cited in support thereof, are all answered in the opinion of the Supreme Court in the case of *United States vs. Staats*, 8 Howard 41, cited in appellant's brief at page 6. We take the following quotation from that case:

“A genuine instrument containing a false statement of facts, used in support of a claim, the party knowing it to be false, and using it with the intent to defraud, presents a case not distinguishable in principle, or in turpitude, or in its mischievous effects, from one in which every part of the instrument is fabricated; and when the one is as fully within the words of the statute as the other, we may well suppose that it was intended to embrace it.”

In the case of *U. S. vs. Sheridan*, 329 U. S. 379, the question in the present case was not before the Supreme Court. The only issues before the court involved Counts I and II. These two counts were sufficient to sustain the conviction and justify the sentence. Therefore, it

was not considered necessary by the government to urge a consideration of Count III.

## CONCLUSION

The check in the present case meets all of the conditions and requirements set out in the authorities hereinbefore cited.

The check was *made* by the appellant with the intent to defraud. It was a false and fictitious check in that it was drawn on an account and against a credit that did not exist. There is no difference between drawing a check on a fictitious account or credit and drawing a check in a fictitious name or on a bank that does not exist. One is just as false and fictitious as the other, the purpose and intent being in each instance to defraud.

We therefore submit that the judgment should be affirmed.

Respectfully submitted,

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